

EXPLANATION OF COMMISSION DETERMINATIONS ON ADEQUACY

in

Fresh Cut Flowers from Ecuador and Mexico, Inv. Nos. 731-TA-331 and 333 (Review); *Standard Carnations from Chile*, Inv. Nos. 701-TA-276 (Review) and 731-TA-328 (Review); and *Pompom Chrysanthemums from Peru*, Inv. No. 303-TA-18 (Review)

On June 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Tariff Act of 1930, as amended (19 U.S.C. § 1675(c)(5)).¹ The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products.²

Standard Carnations, Standard Chrysanthemums and Pompom Chrysanthemums from Ecuador, Inv. No. 731-TA-331 (Review)

With respect to the review of fresh cut flowers from Ecuador, the Commission determined that the domestic interested party group response to its notice of institution was inadequate and that the respondent interested party group response was adequate. Regarding domestic interested parties, the Commission received a consolidated response from the President of Pikes Peak Greenhouse, the Floral Trade Council (“FTC”),³ the FTC subcommittee on standard carnations, the FTC subcommittee on pompom chrysanthemums, and the FTC subcommittee on standard chrysanthemums.⁴ The Commission found the response individually adequate with respect to each of these domestic interested parties.

The FTC and its subcommittees also submitted information about certain non-FTC producers of the domestic like products. The Commission found that the information concerning the non-FTC producers did not constitute a response to the notice of institution because those producers did not file their responses with the Commission nor did counsel to the FTC indicate that it was filing a response on their behalf.⁵ The Commission determined that the response filed by the domestic interested parties was not an adequate group response for any of the three domestic like products because the responding

¹Commissioner Crawford dissenting.

²See 19 U.S.C. § 1675(c)(5)(D); 63 Fed. Reg. 29372, 29374 (May 29, 1998).

³The FTC is a trade association, a majority of whose members produce or wholesale standard carnations. The Commission found that the FTC is not an interested party with respect to standard or pompom chrysanthemums because a majority of its members are not producers or wholesalers of those domestic like products. See 19 U.S.C. § 1677(9)(C).

⁴The FTC subcommittees on standard carnations, pompom chrysanthemums, and standard chrysanthemums are trade associations, a majority of each consisting of producers or wholesalers of, respectively, standard carnations, pompom chrysanthemums, or standard chrysanthemums.

⁵Chairman Bragg and Commissioner Askey determined that the information from some non-FTC growers, which was submitted to the Commission through counsel for the FTC, constituted responses to the notice of institution. Nothing in the statute or the Commission’s regulations requires that interested parties be represented by counsel or that they personally file documents with the Commission, although parties should exercise control over their submissions to ensure they are fully and accurately submitted. Chairman Bragg and Commissioner Askey therefore determined that the responses of two non-FTC growers of standard carnations and two non-FTC growers of pompom chrysanthemums, which provided all information required by the statute, the Commission’s regulations, and the Commission’s notice of institution, were individually adequate. See 19 U.S.C. § 1675(c)(2) and 19 C.F.R. §§ 201.8 and 207.61. The responses of other non-FTC growers were individually inadequate because they failed to include a statement of the likely effects of revocation of the antidumping or countervailing duty orders at issue, as required by the statute, and because they did not contain the certifications required by the Commission’s rules.

producers only accounted for a minor portion of U.S. shipments of each of the products.⁶

Regarding respondent interested parties, the Commission received a consolidated response from Asociacion de Productores y Exportadores de Flores de Ecuador (“Expoflores”), an association all of whose members are foreign producers or exporters of the subject fresh cut flowers, and eleven individual Expoflores members. Expoflores reported that its members account for virtually all exports of subject flowers to the United States. The Commission received two responses from importers of subject fresh cut flowers. One response was filed by an individual importer of subject fresh cut flowers from Ecuador, Colors of the World. The other was filed by ten importers who are members of the Association of Floral Importers of Florida (“AFIF”). The Commission found that the AFIF is not an interested party because there is no indication that a majority of its members currently import, intend to import, or previously imported, subject fresh cut flowers from Ecuador.^{7 8} In the aggregate, the importer responses account for approximately 73 percent of U.S. imports of subject fresh cut flowers from Ecuador. The Commission determined that the respondent interested party group response was adequate.

Notwithstanding its finding that the domestic interested party group response was inadequate, the Commission determined to conduct a full review.⁹ First, the Commission took into account that the membership of the FTC and its subcommittees consists in large part of wholesalers of standard carnations, pompom chrysanthemums and standard chrysanthemums.¹⁰ While the statute explicitly provides that wholesalers are interested parties,¹¹ the Commission’s notice of institution did not request the type of quantitative information that could be used determine the adequacy level of the response received from the responding wholesalers. Thus, the responses to the notice of institution did not provide a basis to evaluate fairly the extent of participation and role of the responding interested party wholesalers in the domestic industries. Second, the Commission took into account the fact that a number of non-FTC growers who did not file responses to the notice of institution with the Commission nonetheless provided some data and other information to the FTC, including statements of their willingness to participate in the Commission reviews.¹² Their submission of the information and their representations to the FTC concerning the review process provide some indication of their willingness to participate in the reviews. Particularly given that the domestic industries consist of fairly large numbers

⁶Ordinarily, the Commission looks at the responding parties’ share of domestic production. *See* 63 Fed. Reg. 305991, 30603 (June 5, 1998). In assessing the adequacy of the domestic response in these reviews, the Commission used U.S. growers’ shipment data as a proxy for U.S. production. This approach is consistent with that taken by the Commission in the original investigations and with the record-keeping methods reportedly used by many growers. According to the FTC, because of the perishable nature of the product and consequent inability to keep inventories, many growers keep records on the number of flowers they sell rather than on the number of flowers they actually grow.

⁷AFIF did not argue that it is an interested party in the Ecuador review.

⁸Commissioner Crawford found that the AFIF is not an interested party because there is no indication that a majority of its members currently import subject fresh cut flowers from Ecuador. *See* 19 U.S.C. §1677(9).

⁹Commissioner Crawford dissented from the Commission’s decision to conduct a full review of the subject merchandise from Ecuador as well as from the Commission’s decision to conduct full reviews of the other fresh cut flowers orders. She notes that the Commission unanimously determined that it received an inadequate domestic interested party group response in all reviews and that further, in her view, the Commission received inadequate respondent group responses in all but the review involving Ecuador.

¹⁰Chairman Bragg and Commissioner Askey did not base their decisions to proceed to a full review on the wholesalers’ response, or lack thereof.

¹¹*See* 19 U.S.C. § 1677(9)(C), (E).

¹²As noted above, Chairman Bragg and Commissioner Askey did not discount the non-FTC responses because they were filed through FTC counsel.

of small growers, the provision of such information by twenty standard carnation growers and more than forty pompom and standard chrysanthemum growers demonstrates a willingness by growers in these industries to cooperate in providing information relevant to the review.¹³

Standard Carnations from Chile, Inv. Nos. 701-TA-276 (Review) and 731-TA-328 (Review)

With respect to the reviews concerning standard carnations from Chile, the Commission determined that the domestic interested party group response was inadequate for the same reasons as in the review concerning fresh cut flowers from Ecuador. The Commission received one response from an importer of standard carnations from Chile.¹⁴ The responding importer accounted for approximately half of subject imports from Chile. The Commission determined that the respondent interested party group response was adequate.¹⁵ Notwithstanding its finding that there was not an adequate domestic interested party group response, the Commission determined to conduct a full review for the reasons discussed in the section concerning fresh cut flowers from Ecuador.^{16 17}

Standard Carnations, Standard Chrysanthemums and Pompom Chrysanthemums from Mexico, Inv. No. 731-TA-333 (Review)

With respect to the review of fresh cut flowers from Mexico, the Commission determined that both domestic and respondent interested party group responses were inadequate. Regarding domestic interested parties, the Commission determined that the domestic interested party group response for each of the pertinent domestic like products was inadequate for the same reasons as in the review concerning fresh cut flowers from Ecuador.

The Commission received two responses from respondent interested parties.¹⁸ Two affiliated Mexican companies, Visaflor, S.A. de C.V. and Multivia S.A. de C.V., filed a joint response. Multivia

¹³In determining to proceed to a full review, Chairman Bragg did not rely on the non-FTC responses that she found to be inadequate. Chairman Bragg determined to conduct a full review in light of the significant like product issues presented by these reviews, *i.e.*, whether the like product should be redefined to include all flower types other than roses and whether to consider mixed bouquets as a separate like product.

¹⁴That importer is a member of AFIF, and filed its response with AFIF's response. AFIF did not argue that it is an interested party in the Chile reviews. The Commission found that AFIF is not an interested party because there is no indication that a majority of its members currently import, intend to import, or previously imported, subject standard carnations from Chile. Commissioner Crawford found that the AFIF is not interested party because there is no indication that a majority of its members currently import subject standard carnations from Chile.

¹⁵Chairman Bragg and Commissioner Crawford determined that the respondent interested party group response for Chile was inadequate. Chairman Bragg notes in this regard that no producer of the subject merchandise in Chile responded to the Commission's notice of institution. Commissioner Crawford determined that the respondent interested party group response rate was inadequate because it accounted for an insufficient share of subject imports or foreign production or exports to the United States of the subject merchandise.

¹⁶Chairman Bragg also based her determination to conduct a full review in the Chile investigations on her desire to promote administrative efficiency in light of her determination that a full review concerning Ecuador is warranted.

¹⁷Commissioner Crawford dissenting.

¹⁸Commissioner Crawford found that only one Mexican firm, Multivia, qualifies as an interested party under the statute since it is the only Mexican firm responding to the notice of institution that currently manufactures, produces or exports subject merchandise to the United States.

currently exports subject flowers to the United States. Visaflor produced the subject flowers during the original investigations and continued producing until 1992; although it does not currently produce subject merchandise, it indicated that it may produce subject flowers in the future. The Commission also received a response from Rancho Guacatay, another Mexican grower that exported the subject merchandise to the United States in the past, although it had no exports in 1998. The Commission found that the responses of Multivia/Visaflor and Rancho Guatacay were individually adequate,^{19 20} but found that the respondent interested party group response was not adequate because it represents only a small portion of subject merchandise exported from Mexico to the United States.

The Commission further determined to conduct a full review for the reasons discussed in the section concerning fresh cut flowers from Ecuador and to promote administrative efficiency in light of the Commission's decision to conduct full reviews concerning Ecuador and Chile.^{21 22}

Pompom Chrysanthemums from Peru, Inv. No. 303-TA-18 (Review)

With respect to the review of pompom chrysanthemums from Peru, the Commission determined that both domestic and respondent interested party group responses were inadequate. Regarding domestic interested parties, the Commission determined that the domestic interested party group response was inadequate for the same reasons as in the review concerning fresh cut flowers from Ecuador. Because no respondent interested party responded to the notice of institution, the Commission determined that the respondent interested party group response was inadequate. The Commission further determined to conduct a full review for the reasons discussed in the section concerning fresh cut flowers from Ecuador and to promote administrative efficiency in light of the Commission's decision to conduct full reviews concerning Ecuador and Chile.^{23 24}

A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's web site.

¹⁹ Commissioner Askey emphasizes that she sees no indication that the statutory definition of "interested party," 19 U.S.C. § 1677(9)(A), was intended to exclude former producers that continue to be subject to antidumping orders.

²⁰ Commissioner Crawford dissenting.

²¹ See 63 Fed. Reg. 30599, 30604 (June 5, 1998).

²² Commissioner Crawford dissenting.

²³ See 63 Fed. Reg. 30599, 30604 (June 5, 1998).

²⁴ Commissioner Crawford dissenting.